

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-118077-06

Date: NOVEMBER 20, 2006

In Re:

Legend:

Decedent =

Spouse =

H =

J =

Country =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear ,

We received your letter dated March 6, 2006, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make a Qualified Domestic Trust (QDOT) election with respect to certain property passing to Spouse from Decedent's estate as well as an extension of time to assign certain property to a QDOT.

According to the facts submitted, Decedent, a United States citizen, died testate on Date 2, survived by his spouse, Spouse, a resident of the United States and a citizen of Country. Spouse is not a United States citizen. Decedent's will, dated Date 1, was admitted to probate on Date 3.

Under the terms of Articles Second, Third and Fourth of Decedent's will, various specific bequests and devises passed outright to Spouse. Under Article Sixth, one-third

of the residuary estate passed for the benefit of Spouse in the form of a trust intended to qualify as a qualified domestic trust (QDOT) described in section 2056A(a) (Decedent's QDOT).

Further, Decedent's interest in a joint bank account held with Spouse passed to her, as well as the proceeds of an insurance policy on Decedent's life that was included in the gross estate.

H, a CPA and the executor of Decedent's estate, prepared Decedent's Form 706 and filed the return on Date 4, within 1 year of the due date of Form 706. On the return, H did not claim a marital deduction or make an election under section 2056A(d).

On Date 5, within 1 year of the due date of Form 706, in accordance with section 2056(d)(2)(B), Spouse created a QDOT (Spouse's QDOT), with Spouse and J as trustees. J is the U.S. Trustee of Spouse's QDOT, pursuant to the requirements of section 20.2056A-1. On the same date, Spouse irrevocably assigned to Spouse's QDOT all of Spouse's interest in the outright bequests passing to Spouse under Articles SECOND, THIRD, and FOURTH of Decedent's will. Spouse also irrevocably assigned to Spouse's QDOT all of Spouse's interest in the joint bank account and insurance policy proceeds.

It is represented that, to date, no distributions have been made to any beneficiary of Decedent's estate.

H requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to assign the assets passing to Spouse under Articles SECOND, THIRD, and FOURTH of Decedent's will, and all of Spouse's interest in Decedent's non-testamentary assets to Spouse's QDOT. H also requests an extension of time to make a QDOT election with respect to Spouse's QDOT. H also requests and extension of time to make a QDOT election with respect to the assets passing to Decedent's QDOT under Article SIXTH of Decedent's will.

Section 2056(a) provides that, for purposes of the tax imposed by section 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under section 2056(a). However, section 2056(d)(2)(A) provides that section 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a qualified domestic trust (QDOT).

Under section 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of

the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by section 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by section 2056A(b); and (3) the executor must make the election prescribed by section 2056A(d) to treat the trust as QDOT.

Under section 2056(d)(2)(B) and section 20.2056A-4(b)(1) of the Estate Tax Regulations, if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, then solely for purposes of section 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made.

Under section 2056(d) and section 20.2056A-3(a), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than 1 year after the due date of the return.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time

until 60 days after the receipt of this letter is granted to assign the assets that pass under Articles SECOND, THIRD, and FOURTH of Decedent's will, as well as all of Spouse's interest in Decedent's non-probate assets, to a QDOT . H is also granted an extension of time to make the QDOT election with respect to the assets passing under Articles SECOND, THIRD, and FOURTH of Decedent's will and the non-testamentary assets assigned by Spouse, to Spouse's QDOT, as well as the assets passing to Decedent's QDOT under Article SIXTH of Decedent's will.

The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special

Enclosures:

Copy of this letter  
Copy of this letter section 6110 purpose